

12/5/2012 10:54 am

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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UNITED STATES OF AMERICA,

-against-

ORDER
12-CR-337 (ADS) (GRB)

RAHMEL MUHAMMAD, also known as "Rah,"

Defendant.

-----X

APPEARANCES:

Loretta E. Lynch, United States Attorney

United States Attorney's Office

610 Federal Plaza

Central Islip, NY 11722

By: John Joseph Durham and Julia Nestor, AUSAs

John S. Wallenstein, Esq.

Attorney for the Defendant

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Suite 100

Garden City, NY 11530

SPATT, District Judge.

On October 26, 2012, the Court held a conference in this criminal matter in which it considered the defendant's motion for an order (1) directing the Government to provide a bill of particulars of the charge contained in Count One of the Indictment; (2) suppressing any evidence seized from the defendant's person or from his apartment because the search and seizure conducted violated his Fourth Amendment Rights; and (3) suppressing any statements alleged to have been made by the defendant to law enforcement personnel, because they were involuntarily obtained in violation of the defendant's Fifth and Sixth Amendment rights.

On the record, the Court (1) denied the defendant's request for a bill of particulars; (2) denied the defendant's motion to suppress evidence seized from his apartment; and (3) with

respect to the defendant's motion to suppress statements he made to law enforcement personnel, directed that a limited evidentiary hearing be held to determine whether the defendant was coerced and whether he was under the influence of cocaine when he met with probation officers on April 23, 2012. On November 5, 2012, the Court confirmed in writing the findings that it made at the October 26, 2012 conference and respectfully referred the matter to United States Magistrate Judge Gary R. Brown for a limited evidentiary hearing.

On November 7, 2012, a limited evidentiary hearing was held before Judge Brown only as to whether the defendant was coerced and whether he was under the influence of cocaine at the April 23, 2012 meeting with the probation officers. On November 19, 2012, Judge Brown issued a Report and Recommendation (the "Report") recommending that the defendant's motion to suppress be denied. Judge Brown found that (1) "the defendant's statements [at the April 23, 2012 meeting] were clearly the result of a free and independent decision, rather than coercion"; and (2) there was "no support for [the] defendant's claim that his cocaine use impacted his statements [at the April 23, 2012 meeting], which the evidence demonstrates were voluntarily and knowingly given." (Report at 11, 12.) To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed

Judge Brown's Report and finds it to be persuasive and without any legal or factual errors.

There being no objection to Judge Brown's Report, it is hereby

ORDERED, that Judge Brown's Report and Recommendation is adopted in its entirety.

The Court denies the defendant's motion to suppress his statements made to the Probation Department on April 23, 2012.

SO ORDERED.

Dated: Central Islip, New York
December 5, 2012

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge